IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9793 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARNENDRA INDUSTRIES LTD.

Versus

RECOVERY OFFICER,

Appearance:

1. Special Civil Application No. 9793 of 2002

SINGHI & CO for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/02/2004

ORAL JUDGEMENT

Mr.P J Mehta learned advocate appearing for the respondent, at the outset, submitted that the respondent

has taken a decision on 29/10/02, copy whereof is produced at Annexure 'R', together with the written submissions, and the same is in pursuance of the order dated 02/08/02 passed by this Court in S.C.A.No.6598/2002.

2. When the petition came to be preferred at the relevant point of time, the petitioner was not aware about the aforesaid decision and Mr.Amin learned advocate appearing for the petitioner submits that the petitioner had not received the copy of the decision and in any event, now as the petitioner has received the copy, and therefore, Mr.Amin submits that the petitioner will resort to the remedies available under the law, for challenging the legality and validity of the decision dated 29/10/02. However, he submitted that the properties which are attached may not be auctioned by the respondent for a period of four weeks from today. I am of the view that when the order is communicated only with the affidavit, then reasonable time should be given to the petitioner to challenge the order. In the meantime, since the attachment is already effected and if the auction takes place, it may create irreversible situation and therefore, some breathing time can be given to the petitioner.

3. Under the circumstances, I find that the following directions shall meet with the answer of justice;

(i) The petitioner shall, if he so desires, resort to proceedings, for challenging the legality and validity of the order dated 29/10/02, copy whereof is produced at Annexure 'R', in accordance with law, within a period of four weeks from today.

(ii) The auction of the property attached shall not be made for a period of four weeks from today.

4. The petition is disposed of accordingly. No costs.

(Jayant Patel, J.)

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